

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHEE LEE,

Plaintiff,

CIV. S-04-1322 PAN

v.

JO ANNE B. BARNHART,  
Commissioner of Social  
Security,

Memorandum of Decision

Defendants.

—oOo—

Pursuant to 42 U.S.C. § 405(g), plaintiff requests this court review defendant's decision denying plaintiff supplemental security income benefits.

If the claimant meets eligibility requirements, the Commissioner bases his decision upon a five-step analysis. First, the claimant must not currently be working. 20 C.F.R. § 416.920(b). Second, the claimant must have a "severe" impairment. 20 C.F.R. § 416.920(c). Third, the medical evidence

1 of the claimant's impairment is compared to a list of impairments  
2 that are presumed severe enough to preclude work; if the  
3 claimant's impairment meets or equals one of the listed  
4 impairments, benefits are awarded. 20 C.F.R. § 416.920(d).  
5 Fourth, if the claimant can do his past work benefits are denied.  
6 20 C.F.R. § 416.920(e). Fifth, if the claimant cannot do his  
7 past work and, considering the claimant's age, education, work  
8 experience, and residual functional capacity, cannot do other  
9 work that exists in the national economy, benefits are awarded.  
10 20 C.F.R. § 416.920(f).

11 Defendant found plaintiff was eligible, suffered from  
12 mild depression, chest pain secondary to gastroesophageal reflux  
13 disease and back pain, but no listed impairment, that retains the  
14 capacity for unskilled work requiring medium strength and is not  
15 disabled.

16 This court must uphold the Commissioner's determination  
17 that a plaintiff is not disabled if the Commissioner applied the  
18 proper legal standards and if the Commissioner's findings are  
19 supported by substantial evidence. Sanchez v. Secretary of  
20 Health and Human Services, 812 F.2d 509, 510 (9th Cir. 1987).  
21 The question is one of law. Gonzalez v. Sullivan, 914 F.2d 1197,  
22 1200 (9th Cir. 1990). Substantial evidence means more than a  
23 mere scintilla, Richardson v. Perales, 402 U.S. 389, 401, 91  
24 S.Ct. 1427 (1971), but less than a preponderance, Bates v.  
25 Sullivan, 894 F.2d 1059, 1061 (9th Cir. 1990). It means such  
26 relevant evidence as a reasonable mind might accept as adequate

1 to support a conclusion. Richardson, 402 U.S. at 401. The court  
2 cannot affirm the Commissioner simply by isolating supporting  
3 evidence but must consider the entire record, weighing evidence  
4 that undermines as well as evidence that supports the  
5 Commissioner's decision. Gonzalez v. Sullivan, supra, 914 F.2d  
6 at 1200. If substantial evidence supports administrative  
7 findings, or if there is conflicting evidence that will support a  
8 finding of either disability or nondisability, the finding of the  
9 Commissioner is conclusive, Sprague v. Bowen, 812 F.2d 1226,  
10 1229-30 (9th Cir. 1987), and may be set aside only if the proper  
11 legal standards were not applied in weighing the evidence,  
12 Burkhart v. Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988).

13 Plaintiff claims defendant erroneously discredited  
14 plaintiff's testimony about the limitations imposed by pain, gave  
15 too little weight to the opinion of a treating physician and  
16 improperly relied upon the medical-vocational guidelines.

17 Plaintiff alleged she is disabled by heart problems,  
18 carpal tunnel syndrome, back pain, decreased hearing in her right  
19 ear, anemia, low blood pressure, stomach pains status post-turbal  
20 ligation, chronic headaches, vision loss, arm pain, hand pain,  
21 leg pain, foot pain, depression and anxiety. Defendant found  
22 plaintiff was not credible because most of her complaints were  
23 entirely unexplained by objective medical evidence. Tr. 13.  
24 Plaintiff's treating physician, Wu-Hsiung Su, M.D., diagnosed  
25 arthritis, carpal tunnel syndrome and depression, said that her  
26 medicine might make her sleepy and said that on account of pain

1 and weakness she could not work. Tr. 219-221.

2 Defendant rejected Dr. Su's opinion upon the grounds that  
3 his treatment records contained no diagnostic findings or tests  
4 for arthritis, the test results found in his records were normal  
5 and that, accordingly, his opinion appeared based upon  
6 plaintiff's subjective complaints.

7 Defendant's finding that plaintiff exaggerated her  
8 impairments is well supported by the record. Plaintiff in fact  
9 also alleged disability as a result of deafness in her right ear  
10 and loss of hearing in her left, vision problem, dizziness, black  
11 out spells and memory loss. Tr. 56. Plaintiff points to no  
12 medical evidence in the record that might explain any of these  
13 impairments. Nor does plaintiff point to anything in Dr. Su's  
14 records that would support his opinion. Plaintiff's complaints  
15 and Dr. Su's opinion aside, plaintiff likewise points to no non-  
16 exertional limitations that might have required defendant obtain  
17 expert vocational evidence before deciding plaintiff's claim. At  
18 bottom, the result defendant reached is the only one this record  
19 permits.

20 The decision denying benefits is affirmed.

21 Dated: May 18, 2005.

22 /s/ Peter A. Nowinski

23 PETER A. NOWINSKI  
24 Magistrate Judge  
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